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OFFICE OF PETITIONS

In re Application of
Joseph, et al.
Application No. 10/659,969
Filed: September 11, 2003
Attorney Docket No. KCC 4979.1 (K-C
19,378B)
For: ABSORBENT PRODUCTS
COMPRISING A MOISTURIZING AND
LUBRICATING COMPOSITION

DECISION GRANTING
PETITION

This is a decision on the reconsideration petition under 37 CFR 1.53(e), filed August 3, 2004, requesting that page 19 of the specification be accorded a filing date of September 11, 2003.

The application was filed on September 11, 2003. On April 14, 2004, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of Nonprovisional Application" (Notice) informing petitioners, *inter alia*, that page 19 appeared to have been omitted.

Applicant's first petition under 37 CFR 1.53(e), filed April 26, 2004 was dismissed on June 29, 2004 because the postcard receipt was deemed not properly itemized.

In response to the petition decision, petitioner timely filed the present reconsideration petition.

Petitioners request that the application be accorded a filing date of September 11, 2003 with page 19 as part of the original application papers based on their contention that page 19 was received in the Patent and Trademark Office (PTO) on September 11, 2003. In support, the petition is accompanied by a copy of applicants' postcard receipt showing an Office of Initial Patent Examination generated barcode showing September 11, 2003 as the date of receipt.

A properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503.

The Office maintains that the itemized postcard in this case was not properly itemized. It is noted that the postcard receipt lists "49 Total Pages of Application," while the original transmittal letter properly identifies "specification [Total Pages 49]." The word "application" is viewed differently from the word "specification." In addition, while petitioner asserts that applicant's postcard receipt was not annotated and this appears to be the case, the first page of the original transmittal

letter is annotated with, "The PTO did not receive the following listed item(s): Page 19 of specification."

Nonetheless, discrepancies between a postcard receipt and an annotation on a transmittal letter should be resolved in favor of the postcard receipt.

Even though the postcard receipt was not properly itemized with respect to the specification, petitioner can establish that 49 pages of application were received. Fortunately, petitioner numbered the specification, claims and abstract in sequential order and itemized the drawings separately. The Office received pages 1-18 and 20-49. Since petitioner has established that 49 pages were received in the Office on September 11, 2003, the Office will accept page 19 as filed on September 11, 2003.

In the future, petitioner is strongly encouraged to itemize any new application postcard receipts with the word "specification" rather than the word "application."

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of September 11, 2003, using the copy of page 19 supplied on April 26, 2004.

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.



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